

AMENDED IN ASSEMBLY MARCH 30, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 468

Introduced by Assembly Member Yee

February 16, 2005

An act to amend Section 7576 of the Government Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 468, as amended, Yee. Interagency responsibilities over handicapped children: mental health assessments.

Existing law requires school districts, county offices of education, and special education local plan areas to comply with state laws that conform to the federal Individuals with Disabilities Education Act, in order that the state may qualify for federal funds available for the education of individuals with exceptional needs.

Existing law requires school districts, county offices of education, and special education local plan areas to identify, locate, and assess individuals with exceptional needs and to provide those pupils with a free appropriate public education in the least restrictive environment, with special education and related services as reflected in an individualized education program. The law authorizes a local educational agency to refer a pupil suspected of needing mental health services to a community mental health service.

This bill would require the local educational agency to obtain a copy of the community mental health service's standard assessment plan, *which shall be provided to it by the community mental health service provider* and provide the parent with an opportunity to consent to the assessment plan in advance, and would make conforming changes, thereby imposing a state-mandated local program. The bill would

require the appropriate community mental health service to seek additional written consent to provide followup mental health services.

The bill would require the local administering agency to complete the assessment for eligible children within 50 calendar days, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7576 of the Government Code is
2 amended to read:
3 7576. (a) The State Department of Mental Health, or any
4 community mental health service, as defined in Section 5602 of
5 the Welfare and Institutions Code, designated by the State
6 Department of Mental Health, are responsible for the provision
7 of mental health services, as defined in regulations by the State
8 Department of Mental Health, developed in consultation with the
9 State Department of Education, if required in the individualized
10 education program of a pupil. A local educational agency is not
11 required to place a pupil in a more restrictive educational
12 environment in order for the pupil to receive the mental health
13 services specified in his or her individualized education program
14 if the mental health services can be appropriately provided in a
15 less restrictive setting. It is the intent of the Legislature that the
16 local educational agency and the community mental health
17 service vigorously attempt to develop a mutually satisfactory
18 placement that is acceptable to the parent and addresses the
19 educational and mental health treatment needs of the pupil in a
20 manner that is cost-effective for both public agencies, subject to
21 the requirements of state and federal special education law,
22 including the requirement that the placement be appropriate and

1 in the least restrictive environment. For purposes of this section,
2 “parent” is as defined in Section 56028 of the Education Code.

3 (b) A local educational agency, individualized education
4 program team, or parent may initiate a referral for assessment of
5 the social and emotional status of a pupil, pursuant to Section
6 56320 of the Education Code. Based on the results of
7 assessments completed pursuant to Section 56320 of the
8 Education Code, an individualized education program team may
9 refer a pupil who has been determined to be an individual with
10 exceptional needs as defined in Section 56026 of the Education
11 Code and who is suspected of needing mental health services to a
12 community mental health service if the pupil meets all of the
13 criteria in paragraphs (1) to (5), inclusive. Referral packages shall
14 include all documentation required in subdivision (c), and shall
15 be provided immediately to the community mental health service.

16 (1) The pupil has been assessed by school personnel in
17 accordance with Article 2 (commencing with Section 56320) of
18 Chapter 4 of Part 30 of the Education Code. Local educational
19 agencies and community mental health services shall work
20 collaboratively to ensure that assessments performed prior to
21 referral are as useful as possible to the community mental health
22 service in determining the need for mental health services and the
23 level of services needed.

24 (2) (A) The local educational agency has obtained written
25 parental consent for the referral of the pupil to the community
26 mental health service, for the release and exchange of all relevant
27 information between the local educational agency and the
28 community mental health service, and for the observation of the
29 pupil by mental health professionals in an educational setting.

30 (B) The local educational agency shall obtain a copy of the
31 community mental health service’s standard assessment plan, *if*
32 *any, which shall be provided to the local educational agency by*
33 *the community mental health service provider* and shall provide
34 the parent with an opportunity to provide advance written
35 consent to the *community mental health service’s* standard
36 assessment plan at the same time that he or she consents to the
37 referral. If the community mental health service accepts the
38 referral and agrees to provide the assessment, the advance written
39 consent shall satisfy the requirements for parental consent
40 pursuant to subdivision (c) of Section 56321 of the Education

1 Code, unless the parent revokes his or her consent. ~~If the parent~~
2 ~~signs a written consent to refer the child for an assessment of the~~
3 ~~child's emotional status, no other consent is needed from the~~
4 ~~parent to perform the assessment of the child's emotional status.~~

5 (C) *Notwithstanding any provision of law to the contrary, and*
6 *to the extent permitted under federal law, the community mental*
7 *health service provider shall complete its assessment of the child*
8 *within 50 calendar days of the referral. The time period shall not*
9 *begin to run until five calendar days after the community mental*
10 *health service receives the referral package, including, but not*
11 *limited to, the parent's advance written consent to the*
12 *assessment. During the five-day period, if the community mental*
13 *health service provider determines that the referral package is*
14 *complete and that the assessment is necessary, it shall become*
15 *the responsible community mental health service provider for the*
16 *child. The community mental health service provider shall work*
17 *collaboratively with the parents in scheduling assessment*
18 *appointments at mutually convenient times and locations so as to*
19 *minimize the likelihood of cancellations or of the need to*
20 *reschedule.*

21 (D) ~~After the assessment pursuant to subparagraph (B) is~~
22 ~~completed and a knowing decision can be made, based on that~~
23 ~~assessment, regarding the child's need for further mental health~~
24 ~~services, the appropriate completed and it has been determined~~
25 ~~that the child needs mental health services, the community~~
26 ~~mental health service shall seek additional written consent to~~
27 ~~provide those follow-up mental health services at the~~
28 ~~individualized education program team meeting held pursuant to~~
29 ~~paragraph (1) of subdivision (d) of Section 7572.~~

30 (3) The pupil has emotional or behavioral characteristics that
31 are all of the following:

32 (A) Are observed by qualified educational staff in educational
33 and other settings, as appropriate.

34 (B) Impede the pupil from benefiting from educational
35 services.

36 (C) Are significant as indicated by their rate of occurrence and
37 intensity.

38 (D) Are associated with a condition that cannot be described
39 solely as a social maladjustment or a temporary adjustment
40 problem, and cannot be resolved with short-term counseling.

1 (4) As determined using educational assessments, the pupil's
2 functioning, including cognitive functioning, is at a level
3 sufficient to enable the pupil to benefit from mental health
4 services.

5 (5) The local educational agency, pursuant to Section 56331 of
6 the Education Code, has provided appropriate counseling and
7 guidance services, psychological services, parent counseling and
8 training, or social work services to the pupil pursuant to Section
9 56363 of the Education Code, or behavioral intervention as
10 specified in Section 56520 of the Education Code, as specified in
11 the individualized education program and the individualized
12 education program team has determined that the services do not
13 meet the educational needs of the pupil, or, in cases where these
14 services are clearly inadequate or inappropriate to meet the
15 educational needs of the pupil, the individualized education
16 program team has documented which of these services were
17 considered and why they were determined to be inadequate or
18 inappropriate.

19 (c) If referring a pupil to a community mental health service in
20 accordance with subdivision (b), the local educational agency or
21 the individualized education program team shall provide the
22 following documentation:

23 (1) Copies of the current individualized education program, all
24 current assessment reports completed by school personnel in all
25 areas of suspected disabilities pursuant to Article 2 (commencing
26 with Section 56320) of Chapter 4 of Part 30 of the Education
27 Code, and other relevant information, including reports
28 completed by other agencies.

29 (2) A copy of the parent's consent for referral and, at the
30 parent's option, advance written consent to the community
31 mental health service's assessment plan, obtained as provided in
32 paragraph (2) of subdivision (b).

33 (3) A summary of the emotional or behavioral characteristics
34 of the pupil, including documentation that the pupil meets the
35 criteria set forth in paragraphs (3) and (4) of subdivision (b).

36 (4) A description of the counseling, psychological, and
37 guidance services, and other interventions that have been
38 provided to the pupil, as provided in the individualized education
39 program of the pupil, including the initiation, duration, and
40 frequency of these services, or an explanation of the reasons a

1 service was considered for the pupil and determined to be
2 inadequate or inappropriate to meet his or her educational needs.

3 (d) Based on preliminary results of assessments performed
4 pursuant to Section 56320 of the Education Code, a local
5 educational agency may refer a pupil who has been determined to
6 be, or is suspected of being, an individual with exceptional needs,
7 and is suspected of needing mental health services, to a
8 community mental health service if a pupil meets the criteria in
9 paragraphs (1) and (2). Referral packages shall include all
10 documentation required in subdivision (e) and shall be provided
11 immediately to the community mental health service.

12 (1) The pupil meets the criteria in paragraphs (2) to (4),
13 inclusive, of subdivision (b).

14 (2) Counseling and guidance services, psychological services,
15 parent counseling and training, social work services, and
16 behavioral or other interventions as provided in the
17 individualized education program of the pupil are clearly
18 inadequate or inappropriate in meeting his or her educational
19 needs.

20 (e) If referring a pupil to a community mental health service in
21 accordance with subdivision (d), the local educational agency
22 shall provide the following documentation:

23 (1) Results of preliminary assessments to the extent they are
24 available and other relevant information including reports
25 completed by other agencies.

26 (2) A copy of the parent's consent obtained as provided in
27 paragraph (2) of subdivision (b).

28 (3) A summary of the emotional or behavioral characteristics
29 of the pupil, including documentation that the pupil meets the
30 criteria in paragraphs (3) and (4) of subdivision (b).

31 (4) Documentation that appropriate related educational and
32 designated instruction and services have been provided in
33 accordance with Sections 300.24 and 300.26 of Title 34 of the
34 Code of Federal Regulations.

35 (5) An explanation as to the reasons that counseling and
36 guidance services, psychological services, parent counseling and
37 training, social work services, and behavioral or other
38 interventions as provided in the individualized education
39 program of the pupil are clearly inadequate or inappropriate in
40 meeting his or her educational needs.

1 (f) The procedures set forth in this chapter are not designed for
2 use in responding to psychiatric emergencies or other situations
3 requiring immediate response. In these situations, a parent may
4 seek services from other public programs or private providers, as
5 appropriate. This subdivision does not change the identification
6 and referral responsibilities imposed on local educational
7 agencies under Article 1 (commencing with Section 56300) of
8 Chapter 4 of Part 30 of the Education Code.

9 (g) Referrals shall be made to the community mental health
10 service in the county in which the pupil lives. If the pupil has
11 been placed into residential care from another county, the
12 community mental health service receiving the referral shall
13 forward the referral immediately to the community mental health
14 service of the county of origin, which shall have fiscal and
15 programmatic responsibility for providing or arranging for
16 provision of necessary services. In no event shall the procedures
17 described in this subdivision delay or impede the referral and
18 assessment process.

19 (h) A county mental health agency does not have fiscal or
20 legal responsibility for any costs it incurs prior to the approval of
21 an individualized education program, except for costs associated
22 with conducting a mental health assessment.

23 SEC. 2. If the Commission on State Mandates determines that
24 this act contains costs mandated by the state, reimbursement to
25 local agencies and school districts for those costs shall be made
26 pursuant to Part 7 (commencing with Section 17500) of Division
27 4 of Title 2 of the Government Code.